REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The specification has been amended as supported in Figure 1.

New claim 18 is presented, directed to the combination of display and dispensing assembly and freezer cabinet similar to claims 1 and 16 except that the tubes passing over a side wall of the freezing cabinet and cooling by heat transfer fluid pumped external to the freezer cabinet are not recited. New claims 19-21 are supported at paragraph [0020] of the published application. New claim 23 is supported by the amendment to the specification and by Figure 1.

The present invention is directed to a way of displaying and dispensing products which must be stored at below ambient temperature which permits products having different storage requirements to be sold together, which does not require the capital expenditure for a further cabinet and which enables extra capacity to be provided at times when demand is greatest.

The invention comprises a display and dispensing assembly for use in combination with a freezer cabinet (or a display and dispensing assembly in combination with a freezer cabinet, as recited in new claim 18) wherein the freezer cabinet has an internal temperature T1. The display and dispensing assembly includes a housing located externally of the freezer cabinet, a chamber within the housing wherein products can be stored at a temperature T2 which is higher than T1, first transfer means within the housing, second transfer means which may be placed inside the freezer cabinet, and

means for circulating a heat transfer fluid through the first and second heat transfer means, the assembly being removable from the freezer cabinet. In claim 1 the second heat transfer means is connected to the first heat transfer means by tubes which pass over a side wall of the freezer cabinet. In claim 16 the assembly is cooled by a heat transfer fluid which is pumped external to the freezer cabinet. Claim 18 recites the freezer cabinet in combination with the housing.

The Office cites Bortz, US Patent No. 2,671,319 as disclosing a freezing cabinet A and a housing located externally of the freezing cabinet. The Office points to no teaching by Bortz of an assembly which is removable or of second heat transfer means being connected to the first heat transfer means by tubes which pass over a side wall of the freezing cabinet.

The Office asserts that the recitation of the assembly being removable is considered to be a mere functional limitation and not a positive structural limitation. It is submitted that the recitation of the assembly being removable is a structural limitation in that it requires that the structure be such that the assembly can be removed. In contrast, the Office points to no reason why the assembly of Bortz could be considered removable.

Even if the Lane et al. assembly were considered to be removable, it is not at all apparent how that would teach one of ordinary skill to make the Bortz assembly removable. This seems a classic application of hindsight wherein the prior art is reconstructed with knowledge of applicants' invention. This is not a permitted approach to an obviousness determination. Applicants' invention is quite different from those of Bortz and Lane et al. and this is reflected in part by the flexibility which is permitted by the removal of the assembly.

The "removal" language is not language which merely defines a way of using an apparatus; it necessarily implies structure in that there needs to be structure which permits removal of the assembly under the present claim language.

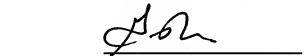
The recitation of the second heat transfer means being connected to the first heat transfer means by tubes which pass over a side wall of the freezer, is a reflection of the flexibility of the present invention and does not appear in any way to be suggested by Bortz. The Office points to no teaching in either Bortz or Lane et al. of the present invention wherein the assembly is removable from the freezer cabinet.

The invention is further distinguished by features recited in claims 19 through 22. Claims 19 and 21 recite that the housing is free standing. Clearly this is not the case in Bortz. Moreover, the Office points to no suggestion by Bortz that the housing could be free standing from the freezer. Claims 20 and 22 recite that the housing is hung over the side of the freezer cabinet. Again, the Office points to no teaching of this by Bortz.

In short, Bortz teaches an invention wherein the freezing and higher temperature chambers are integral. In contrast, applicants have invented a flexible apparatus, i.e. an assembly which can be used with a cabinet by attaching thereto and which can later be removed. It is not the references which teach this, but applicants own disclosure in hindsight. If use of a tube passing over a side wall is an obvious choice, as asserted in the Office Action, it is only so after one of ordinary skill has been taught applicants' invention from applicants' specification.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



Gerard J. McGowan, Jr.
Registration No. 29,412
Attorney for Applicant(s)

GJM/mpk
(201) 894-2297